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Convention on the Rights of Persons with Disabilities

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**Committee on the Rights of Persons with Disabilities**
**Thirteenth session**
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Item 9 of the provisional agenda
**Consideration of reports submitted by States parties under article 35 of the Convention**

# List of issues in relation to the initial report of the Cook Islands

**Addendum**

## Replies of the Cook Islands to the list of issues*

[Date received: 18 February 2015]

## A. Purpose and general obligations (arts. 1–4)

### Purpose (art. 1)

**Reply to the issues raised in paragraph 1 of the list of issues (CRPD/C/COK/Q/1)**

1. As stated in the Country Report, the definitions of disability are defined as below.

2. The *Cook Islands National Disability Policy* defines disability as an evolving concept, with focus on the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full, equal and effective participation in society. This definition emphasises the impact of environmental barriers and attitudes within communities that may limit access and mobility of persons with disabilities, including hindering their ability to carry out certain activities within the workplace and the community in general. This definition reflects the shift in our understanding of disability, from something that is attributed entirely to the individual, to highlighting the onus on society to eliminate barriers that may limit the full participation of all people in everyday life. Definitions often determine the way we address the issues. By shifting the emphasis away from the individual, we are highlighting the important role that all members of society have a part to play in ensuring that rights are protected for all.

* The present document is being issued without formal editing.

3. The *Disability Act 2008* defines a person with a disability as any person who has a congenital or permanent physical impairment, including any sensory impairment, or who has an intellectual or developmental disability, or a person with a loss or abnormality of physiological or anatomical structure or function, or a person with a psychiatric disability and may further include any person certified by a Registered Medical Practitioner approved by the Minister for the purpose to be a person with a disability.

4. While the *Disability Act 2008* defines a disability as a condition of the individual, the *National Disability Policy* takes a wider approach targeting how external factors may increase or reduce accessibility and participation of an individual in society. The *National Policy* definition is seen as complementary to the legislative definition and outlines the strategic actions that external agents, such as Government agencies, private sector and non-state actors, can undertake to improve accessibility for persons with disability as defined under the Disability Act 2008.

**Reply to the issues raised in paragraph 2 of the list of issues**

5. Section 32 of the *Disability Act 2008* defines "reasonable accommodation" as necessary or appropriate modification or adjustments not imposing a disproportionate or undue burden to ensure that the person with a disability is treated on an equal basis with persons not having a disability, provided however that reasonable accommodation cannot be applied to fundamental rights.

6. While "disproportionate and undue burden" are not expressly defined in the Act, the Explanatory Memorandum that accompanied the Bill further explains that "reasonable accommodation" is a recognition and acceptance by persons with a disability that there are circumstances in which large financial implications, as an example, may not mean that although there is a willingness to accommodate, it may not always be practical in particular circumstances of individuals or Government. The provision provides an opportunity for the Ombudsman or Judge to consider efforts towards accommodation in local and particular circumstances and it is expected that the terms "disproportionate and undue burden" would be considered in this context.

## General obligations (art. 4)

**Reply to the issues raised in paragraph 3 of the list of issues**

7. National Policy development in the Cook Islands is undertaken centrally by the Office of the Prime Minister and by relevant Government agencies regarding sector policies.

8. The Central Policy and Planning Unit in the Office of the Prime Minister has primary responsibility in establishing the 5 year strategic National Sustainable Development Plans (NSDP). The NSDP sets the overarching national goals, objectives and priorities for the country across sectors. In conducting consultations, the Central Policy and Planning Unit undertakes a broad based approach seeking input from all non-state actors and civil society organisations as well as Government agencies. The NSDP is also influenced by international and regional commitments that the country has made and policy reviews undertaken by government agencies.

9. Once the goals of the NSDP have been set, sector policies are expected to be aligned with the national goals and provide detail on how goals will be achieved within relevant sectors. The annual budget process requires that a Budget Policy Statement be published outlining the Government's annual priorities for the National Budget. The Budget Policy Statement is aligned to the NSDP but focuses on the 5 year priorities into annual targets.

10. Mainstreaming disabilities into planning and policy was highlighted in the new Disability Inclusive Development Policy as a priority area. A new policy toolkit has been developed by the Central Policy and Planning Unit in the Office of the Prime Minister to build the capacity of government agencies on policy development. The policy tool kit includes a stakeholder analysis, which ensures that in the development of any policy, policy makers must ensure the impacts on disabilities and recognises the need to consult.

11. The National Sustainable Development Committee (NSDC) that reports to Cabinet Ministers reviews progress against the National Sustainable Development Plan and Sector Policies presented to Cabinet. A peer review was undertaken of the national planning processes in 2014 (Forum Compact Peer Review Report, 2014) by the Pacific Islands Forum Secretariat with one key recommendation that the NSDC membership be reviewed to include specifically representation from Civil Society Organizations (CSO), as well as a person representing the social sector of government. This group is central to guiding Cabinet's decisions on policy throughout the year (they meet between six–ten times a year). A social sector and CSO representative would be expected to represent all social perspectives including the views of persons with disabilities. The recommendations of the Report are being reviewed and this one is expected to be implemented over the next 12 months.

**Reply to the issues raised in paragraph 4 of the list of issues**

12. It is unclear where the 0.7% rate referred to in the question has come from. The State Party report identified that there were 296 people registered with a disability in the Ministry of Internal Affairs database (paragraph 26 of the State Party report). Based on that, relative to the resident population at that time of 15,400, this represented 1.96% of the population registered on the Ministry database.

13. This number is likely to understate the number of persons with disability as the Ministry database required individuals to self identify with the Ministry. There is no legal obligation for persons with disabilities to report to the Ministry.

14. The original database used by the Ministry involved a comprehensive assessment in 2001 through a donor funded project and had estimated that there were 645 people with disabilities living in the Cook Islands in 2001. Over the decade, the number registered with the Ministry has fallen as people have either passed away or relocated internationally. There is no legally mandated reporting on disability cases from the Ministry of Health, who have responsibility for diagnosis, to inform or update the Ministry of Internal Affairs database. However, work is underway to improve data-sharing between the two agencies, including with the Ministry of Education, through a new web-based application to ensure more accurate and efficient collection of disability data in the Cook Islands.

15. In the 2011 Census, a number of questions were asked to capture the prevalence of disabilities in the population through self identification. 13.8% of individuals (of the residential population of 14,974) responded to the Census identifying that they experienced some form of disability, with difficulties lasting 6 months or more.

16. An area that will be improved in the next Census is the inclusion of questions on severity of disability, such as a scale system of 1–5, with 1 being able to do some tasks and 5 maybe being unable to do anything. This will provide better data on the types and severity of disabilities prevalent in the Cook Islands.

# B. Specific rights

## Equality and non-discrimination (art. 5)

### Reply to the issues raised in paragraph 5 of the list of issues

17. Since the introduction of the Disability Act 2008, the office of the Ombudsman has not received any complaints related to the Disability Act 2008. There is likely to be limited awareness of the role of the Ombudsman in administering this part of the Disability Act due to continuing resource constraints. However, the Ombudsman office has received support from the Ministry of Internal Affairs and the Cook Islands National Disability Council to assist promoting awareness on the rights of persons with disabilities, or their families, and the role of the Ombudsman office to lodge any complaints of abuse or discrimination against them.

## Women with disabilities (art. 6)

### Reply to the issues raised in paragraph 6 of the list of issues

*Education*

18. Government has a responsibility to ensure quality education for all. The Education Act 2012 makes school enrolment and attendance compulsory for any child resident in the Cook Islands between the ages of 5 and 16 years. Only the Secretary of Education may exempt a child from attendance and the Act explicitly states that the Secretary may not do so on the grounds of the student having a special need.

19. The Ministry of Education's Equity, Access and Participation strategic policy states that all Cook Islanders, regardless of ability, gender, wealth, location, language or ethnic origin, will be able to participate in relevant, quality and appropriate learning experiences. It is the responsibility of the Ministry of Education to provide such opportunities and mitigate any barriers to accessing them that may exist.

20. The Inclusive Education Policy of the Ministry of Education was implemented in 2002 and reviewed in 2011 in response to the Ministry's Equity, Access and Participation Policy. The Inclusive Education policy created a shift from "special needs" units to an inclusive approach. This means that children with particular learning and physical needs are, as much as possible, mainstreamed into school classrooms. There are no Special Schools in the Cook Islands. The Inclusive Education policy addresses the learning needs of students with physical, behavioural, developmental and intellectual difficulties as well as gifted children to ensure that all students have learning programmes that are developed to meet their individual needs and are resourced to support them achieve agreed goals.

*Employment*

21. In 2012, the Cook Islands Government enacted the Employment Relation Act 2012. Part 5 of the Act outlines anti-discrimination provisions and states that an employer, or representative of an employer, must not take adverse action against an employee or a prospective employee directly or indirectly because of a prohibited ground of discrimination, except in the case where the adverse action is taken because of the inherent requirements of the particular position concerned; or the action is taken against an employee of an institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed and is taken in good faith; and to avoid injury to the religious susceptibilities of adherents of that religion or creed.

22. An adverse action by an employer or representative of an employer in the Employment Relations Act 2012 is defined as if the employer terminates the employee's employment for reasons relating to the employee's capacity or conduct; or subjects the employee to a detriment in circumstances in which other employees employed by that employer on work of the description would not be dismissed or subjected to such detriment; or retires the employee or causes the employee to retire or resign. An employer or representative of an employer subjects an employee to a detriment if the employer's action has a detrimental effect on the employee's employment, employment performance or employment satisfaction. An employer or representative of an employer takes adverse action against a prospective employee if the employer refuses to employ the prospective employee, or discriminates against the prospective employee in relation to the terms and conditions of employment offered to the prospective employee.

23. Prohibited grounds of discrimination are defined in the Employment Relations Act 2012 as:

(a) Race, ethnic origin, skin colour or appearance;

(b) National origin;

(c) Opinion and belief;

(d) Religion;

(e) Gender or sexual preference;

(f) Disability;

(g) Age;

(h) Health status;

(i) Maternity.

*National Policy on Gender Equality and Women's Empowerment*

24. The Cook Islands National Policy on Gender Equality and Women's Empowerment (2011–2016) promotes the full inclusion of women and girls in decision-making, leadership, economic empowerment, education, health, climate change adaptation and elimination violence against women. The policy specifically identifies the extra vulnerabilities faced by women and girls with disabilities and requires that their issues be protected and action be undertaken to target their needs. One example, under the Gender Project funded by the Australian Government over 2014–15, specific action is required to improve the economic empowerment of women with disabilities by supporting involvement in business opportunities.

**Reply to the issues raised in paragraph 7 of the list of issues**

25. The Cook Islands Government has developed comprehensive legislation, the Family Law Bill, to better address family violence, of which women represent the majority of victims. Family violence includes any violence in the home, and is not limited to violence between spouses, but also against children and other family members. This approach ensures that women with disabilities are also protected in such cases. The Bill has been tabled in Parliament in November 2014 on its first reading and is expected to be referred to a Parliamentary Select Committee for consultation and eventual passage in 2015.

26. The Family Law Bill introduces for the first time in the Cook Islands a comprehensive civil framework for domestic violence. Domestic violence is defined in the Bill to reflect contemporary understandings of the nature and characteristics of domestic violence. It specifically includes physical, sexual, economic, emotional and psychological

abuse, and stalking as well as threats of any these conducts. The Bill defines domestic relationships broadly to include persons who are or were in a marriage or de facto relationship, persons who are or were in a close personal relationship, persons who have a child together, a family relationship, a person who is a domestic worker for another person, a person who is dependent on the other person for help with an activity of daily living required because of disability, illness or impairment, persons who share or have recently shared the same residence and a child who ordinarily resides with the other person or who regularly resides or stays, or has resided or stayed, with the other person.

27. New protection orders will be introduced in the Bill and are an important protective remedy for victims of domestic violence and their children. The Bill provides easier access and greater protection than non-molestation orders which have been previously provided. A protection order also has mandatory conditions to ensure maximum protection to victims.

28. The Bill also introduces police safety orders to ensure the immediate safety of victims. A police safety order removes the alleged violent person from the home to enable victims to safely consider their options. The Bill provides that police safety orders:

- Can be made by a police officer with authority from a sergeant or above;
- Can be made if there has been an act of domestic violence or if the victim reasonably believes an act of domestic violence will occur;
- Can be made for up to 5 days;
- Cannot be made against a child.

29. The Bill places obligations on police officers to investigate a matter if they receive a complaint of domestic violence or suspect that domestic violence has been committed or is likely to be committed. If a police officer does not make a police safety order and no application for a protection order is made by an eligible person the police officer must make a report to the Commissioner of Police within 48 .ours explaining why neither of these actions has occurred.

30. The Government does not provide counselling services in general, however, supports non-governmental organisations in providing such services. Funding is provided to Punanga Tauturu Incorporated to provide counselling services for victims of domestic violence, although it is noted that funding is limited in this area. There are other organisations that also provide counselling services generally such as faith based organisations.

## Children with disabilities (art. 7)

**Reply to the issues raised in paragraph 8 (a) of the list of issues**

31. The Prevention of Juvenile Crimes Act 1968 states "where any constable, community youth officer has reasons to believe that any child is neglected or is living in an environment which is detrimental to his physical or moral wellbeing may notify the Juvenile Crimes Prevention Committee (JCPC)".

32. Cases of child abuse and neglect are reported through the JCPC to the Child and Family Services Division of the Ministry of Internal Affairs. They are usually identified through the Ministry of Justice, Police or Ministry of Education.

33. Only one case of negligence of a child with a disability has been reported to the Division in recent years. This case has been monitored regularly over the past few years and is still being monitored to ensure their safety.

**Reply to the issues raised in paragraph 8 (b) of the list of issues**

34. Children with disabilities or impairments are identified via a referral process from schools or other agencies and then a full assessment is undertaken. This assessment takes into account testing, observations by the advisor, the clinical knowledge and experience of the advisor, school records, interviews, and some medical reports.

35. If a child is confirmed to have a disability or significant impairment, an Individual Education Plan (IEP) is arranged. This is a meeting between home, school and any specialists who have contributed to the assessment (such as Physiotherapists, Psychologists, or Occupational Therapists who live in the Cook Islands). The IEP is a meeting to determine goals and the aspirations of the student and appropriate interventions that will be needed to overcome barriers to their access to education. Depending on the level of impairment, a student's programme is then implemented by the classroom teacher. If more individual support is required, additional support and assistance is provided by an appointed teacher aide.

36. Specialist services have been providing extra support to students in the Cook Islands for many years, funded by the Ministry of Education. These services have included, for the most part, Speech Language Therapists and Educational Psychologists who visit the country for 2–3 weeks at a time to work with identified students.

37. An Early Identification and Intervention project has been identified by the Ministry of Internal Affairs outside the Education system and will commence between now and 2016 under the Disability Inclusive Development project (2014–2016) in collaboration with Ministry of Education, Ministry of Health, Ministry of Internal Affairs, Cook Islands National Disability Council and disability groups.

**Reply to the issues raised in paragraph 9 of the list of issues**

38. Ministry of Education (Inclusive Unit) provides an Inclusive Education Advisory service to support schools, families and students with disabilities to be included in schools (refer response to question 6 above). It offers a referral, assessment, IEP (Individual Education Plan), Connection with community organisations, services (adaptive technology, teacher aide training and support services). The Ministry also maintains a register of students with disabilities in schools and promotes inclusive education in the community through media and workshops. The Ministry supports the development of supportive employment for transition of students with disabilities into the workplace and coordinates specialist visits to assess and upskill teaching staff. The Pa Enua is included in this work where possible.

## Awareness-raising (art. 8)

**Reply to the issues raised in paragraph 10 of the list of issues**

39. Since 2011, there have been four training seminars for public servants, social workers, health and other professionals on the Convention and is currently being implemented to each of the Pa Enua islands by the Ministry of Internal Affairs and Cook Islands National Disability Council. Funding from the Australian Government Disability Inclusive Development project (2014–2016) will enable to training and awareness to be conducted over a two year period on each Pa Enua.

**Reply to the issues raised in paragraph 11 of the list of issues**

40. Information is currently being provided through the current Disability Inclusive Development and CRPD trainings. Advice is also provided through the Disability Division

of the Ministry of Internal Affairs as well as through the key NGO partner in this space, the Cook Islands National Disability Council. Access to information will also be improved through the development of appropriate factsheets through the Ministry website.

## Accessibility (art. 9)

**Reply to the issues raised in paragraph 12 of the list of issues**

41. There is discussion with South Pacific Community (SPC) to carry out a review of the National Building Code. In April 2014, SPC sent staff to carry out consultations in preparing a TOR for Technical Assistants to reflect what is required in the review. Consultations were made with the disability stakeholders including persons with disabilities. The TOR drafted has taken into consideration Article 9 of CRPD, Disability Act and Disability policy.

42. The review of the Building Code is planned to be carried out this financial year assisted by Emergency Management Cook Islands who also have "cyclone proofing" issues to be factored in the Building code.

43. According to clause 40 of the Disability Act, non-compliance to the requirement of the Act for any public building will be penalised accordingly.

**Reply to the issues raised in paragraph 13 of the list of issues**

44. In 2014, the Cook Islands Government began consultation on the development of the Cook Islands National Infrastructure Investment Plan. Consultations were necessary to explore and collect information on potential investments in social infrastructure, and also to collect background information supporting investment plans, including any sector plans and sector policy documents. Through this consultation, the obligations of the Convention and the National Disability Act were discussed so that future major developments such as footpaths could be considered in those developments as an underpinning principle.

45. Recently, there have been some improvements in the provision of accessible facilities to public and private buildings as the general public are aware of the requirement to make public buildings accessible to everyone including persons with disabilities.

## Situations of risk and humanitarian emergencies (art. 11)

**Reply to the issues raised in paragraph 14 of the list of issues**

46. Emergency Management Cook Islands (EMCI) is developing a disability mapping database with the assistance of the National Disability group. This database is loaded on to the EMCI Geo Portal for Disaster Risk Management (DRM) as part of the national response. All Island Council DRM Plans will also include a disability response component into their plans.

## Equal recognition before the law (art. 12)

**Reply to the issues raised in paragraph 15 of the list of issues**

47. In the Ministry of Internal Affairs awareness and advocacy programs, the issue of supporting decisions making by persons with disabilities has been raised and continue to be with respect to their independent will and choices in reference to Article 64 of the Constitution of the Cook Islands.

## Access to justice (art. 13)

### Reply to the issues raised in paragraph 16 of the list of issues

48. Article 64 of the Constitution of the Cook Islands[1] (Constitution) does not include "mental capacity" or "disability" in its list of factors that are protected from discrimination. The Cook Islands Disability Act 2008 recognised this and introduced new anti-discrimination provisions on disability.

49. Under the Cook Islands Act 1915[2] a person who is under a disability may have a trustee appointed by the Court to assist with that person's rights to and management of land.[3] Persons under disability are bound by Land Court orders the same as other persons.[4] A person under disability is not limited to persons of unsound mind or suffering a physical disability. Section 493 of the Cook Islands Act defines person under disability:[5]

> "493. Definition of 'person under disability' – In this Part of this Act the term 'person under disability' means any person who is a minor, or of unsound mind, or in prison, or who is subject to any physical or mental infirmity which in the opinion of [The Land Court] renders him unfit to have the management of his property."

### Reply to the issues raised in paragraph 17 of the list of issues

50. Local language interpreters are available in country and this can be arranged with the Ministry of Justice for persons with a disability who have difficulty with the English language however there is no availability of Braille, sign and digital languages in country as there are neither qualified people in these fields here nor blind and deaf people. Physical access to courts is also provided on arrangement with the ministry.

## Liberty and security of person (art. 14)

### Reply to the issues raised in paragraph 18 of the list of issues

51. Part XXI of the Cook Islands Act provides for orders for medical custody of persons of unsound mind. There is no facility provided by the Ministry of Health for the custody of people of unsound mind. The Cook Islands Act provides for the removal of persons of unsound mind to a medical facility in New Zealand.[6]

52. The criminal liability of persons of unsound mind is provided for in sections 590 to 593 of the Cook Islands Act. Section 590 provides that a person who is of unsound mind so as not to understand the nature of the proceedings cannot be tried but must be detained in prison or some other secure facility.[7] Such order expires after one month.[8]

53. A person who is acquitted on the ground of insanity must also be detained in prison or some other secure facility.[9] The order expires after one month.[10]

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[1] *Constitution of the Cook Islands*.
[2] *Cook Islands Act 2015*.
[3] Ibid. sections 436, 474, 494, 495, 502, 503.
[4] Supra n. 2 section 397.
[5] Supra n. 2 section 492.
[6] Supra n. 2 section 582.
[7] Supra n. 2 section 590.
[8] Supra n. 2 section 592.
[9] Supra n. 2 section 591.
[10] Supra n. 8.

54. Such orders can be replaced by an order for medical custody and removal to New Zealand.[11]

55. There has been one removal of a person of unsound mind to New Zealand in the past four years. The person was removed to the Mason Clinic. Prior to that there is no information available about whether this provision has been used.

## Freedom from exploitation, violence and abuse (art. 16)

### Reply to the issues raised in paragraph 19 of the list of issues

56. The Review of the Crimes Act 1969 has considered the criminal aspects of violence and abuse of all victims including particularly vulnerable victims. Currently the Court accepts that an assault on a person who is a vulnerable adult is an aggravating factor in determining the severity of sentence.

57. Subpart 6.4 of the Crimes Act Amendment Bill 2013 (Crimes Bill) provides for offences against children and vulnerable adults. For example it will be an offence for failing to protect or for ill-treatment of vulnerable adults (which is defined as a person over 18 years who is under the care or supervision of another person due to the person's age, sickness or mental impairment among other reasons). The maximum penalty will be 10 years imprisonment.

58. Sexual offences will be gender neutral under the Crimes Bill. The offending act being sexual violation which includes rape or unlawful sexual connection. The Crimes Bill provides for circumstances of aggravation which increases the maximum penalty to 20 years and includes circumstances in which the alleged victim has a serious physical disability or a cognitive impairment.

59. The definition of consent in the Crimes Bill also includes a person who cannot consent if they are under 16 years of age or have a cognitive incapacity to consent (which is a mental or physical impairment that affects the person's ability to consent or to refuse consent).

60. The Family Law Bill (Family Bill) provides for the civil response to violence in terms of police safety orders and protection orders. The definition of "free agreement" in the Family Bill recognizes that persons with mental or physical disability may not understand the nature of sexual contact or be able to communicate unwillingness to participate in sexual contact.

61. The Family Bill also defines a person who is dependent on another person with help with an activity of daily living because of disability, illness or impairment as being in a domestic relationship with that person and is therefore protected by the domestic violence provisions of the Family Bill.

62. The Family Bill also authorises the Court to make an order for child support for adult children with a mental or physical disability. An adult child is a daughter or son over 18 years of age.

[11] Supra n. 2 section 593.

## Protecting the integrity of the person (art. 17)

### Reply to the issues raised in paragraph 20 of the list of issues

63. There have been no sterilisation procedures undertaken in the last five years.

## Liberty of movement and nationality (art. 18)

### Reply to the issues raised in paragraph 21 of the list of issues

64. No formal discussions have taken place regarding the revision of the Entry, Residence and Departure Act regarding the provisions on persons who are "mentally defective". However, discussions regarding the review of the Act is currently underway given it is considered outdated and no longer appropriate. This review provides an opportune time to consider the intention of the current provision with a view to modernise it.

## Living independently and being included in the community (art. 19)

### Reply to the issues raised in paragraph 22 of the list of issues

65. The Cook Islands Government supports people with disabilities so that they can live independently through a Caregiver's Allowance, as part of the Welfare Payments system. The Caregiver's allowance is provided to people that are required to provide substantial day to day care to elderly Cook Islands pensioners or people with permanent disabilities who have high care needs and do not have capacity to access such care. It is paid in two monthly instalments on the 1st and the 16th of each month. There are approximately 200 people caring for eligible beneficiaries.

66. In addition, special assistance may be provided on a case by case basis and subject to an income and asset test to very elderly beneficiaries and people with severe disabilities to improve accessibility and mobility.

67. The Ministry of Health also provides some nursing support through the Public Health Community Nurse home visits.

68. Some support is provided to community organisations to undertake home visits for rehabilitation and mobility exercises through the Government funded Social Impact Fund. The key organisation currently working in this place is the Te Vaerua Community Rehabilitation Services.

### Reply to the issues raised in paragraph 23 of the list of issues

69. There is nothing in Cook Islands law specific to the guardianship of disabled people. For general guardianship matters of infants, the Guardianship of Infants Act 1926 (extended to apply in the Cook Islands pursuant to Infants Act 1908) is applied by the Courts. An infant is defined as persons under the age of 18 years (refer to Infants Act amendment 2009/5).

70. There is nothing in Cook Islands law to provide for guardianship of persons over the age of 18 years. In the absence of there being no law, it is arguable that a disabled person over the age of 18 years may be able to exercise his or her right to choose their place of residence.

## Personal mobility (art. 20)

**Reply to the issues raised in paragraph 24 of the list of issues**

71. The Ministry of Health supplies assistive devices and mobility aids such as wheelchairs, walkers, frames and crutches for use within the Hospital Wards and for temporary use for discharged patients in their homes.

72. Te Vaerua Community Rehabilitation Services (a non-government organization) in partnership with the Ministry of Health also provides resources such as commodes and crutches on loan. One major issue faced is the non-return of equipment by clients as replacement is difficult. Hospital Comfort (another government organization) also provides assistive devices for hire. Some assistive devices are donated to both organisations.

## Freedom of expression and opinion, and access to information (art. 21)

**Reply to the issues raised in paragraph 25 of the list of issues**

**(a) Access to ICT**

73. Within the draft National ICT Policy 2015–2020 that will soon be endorsed, there is provision for the disabled to have access to ICT:

- Goal 1: Achieve Accessible, affordable and secure ICT-based services

74. Policy Statement: All citizens will have equitable access to affordable and secure ICT. The Government will play a leading role in building a networked society where organizations and individuals have equitable access to ICT-enabled resources including the Pa Enua

- Objective 1: Establish mechanisms for ensuring non-discriminatory access to ICT regardless of level of income, education, age, gender and people with special needs.
- Objective 2: Develop Mechanisms for increasing access by maximizing resources and decreasing cost of ICT equipment and services for rural underserved and public sector.

**(b) Braille**

75. No specific progress in ICT for Braille although discussions are ongoing for assistive technology for the disabled community.

**(c) Sign language usage and qualified interpreters**

76. No specific discussion on this topic within the proposed ICT policy. However, there is provision for outreach and subsequent training as follows:

- Strategies for Objective 1: Establish Mechanisms for Ensuring Non-discriminatory Access to ICT Regardless of Level of Income, Education, Age, Gender and People with Special Needs
- Set in place non-discriminatory laws, policies and practices for equal and equitable access to ICT infrastructure, services, applications and content, both for service providers and consumers;
- Work in collaboration with existing community groups, such as churches, women groups, seniors, schools and libraries to provide outreach to their constituents in

raising the awareness of ICT benefits, and provide opportunities for hands-on training;

- Identify resources and implement programs to support education, training and development of technical systems for people with special needs.

**(d) Easy read**

77. encouraged to add tools to allow people with vision impairment to read comfortably. This also falls in the current discussion for procurement of assistive technology for the disabled.

**(e) Augmentative communication and resourcing for new ICT, including the internet**

78. This is generally covered in Goal 1 of the draft National ICT Policy.

## Respect for home and the family (art. 23)

**Reply to the issues raised in paragraph 26 of the list of issues**

79. The Crimes Act Review has considered the criminal aspects of violence and abuse of all victims including particularly vulnerable victims. Currently the Court accepts that an assault on a person who is a vulnerable adult is an aggravating factor in determining the severity of sentence.

80. Subpart 6.4 of the Crimes Act Amendment Bill 2013 (Crimes Bill) provides for offences against children and vulnerable adults. For example it will be an offence for failing to protect or for ill-treatment of vulnerable adults (which is defined as a person over 18 years who is under the care or supervision of another person due to the person's age, sickness or mental impairment among other reasons. The maximum penalty will be 10 years imprisonment.

81. Sexual offences will be gender neutral under the Crimes Bill. The offending Act being sexual violation which includes rape or unlawful sexual connection. The Crimes Bill provides for circumstances of aggravation which increases the maximum penalty to 20 years and includes circumstances in which the alleged victim has a serious physical disability or a cognitive impairment.

82. The definition of consent in the Crimes Bill also includes a person who cannot consent if they are under 16 years of age or have a cognitive incapacity to consent (which is a mental or physical impairment that affects the person's ability to consent or to refuse consent).

## Education (art. 24)

**Reply to the issues raised in paragraph 27 of the list of issues**

83. Steps taken to ensure adequate budgetary allocation include employment of a full time educational psychologist and a full time inclusive education advisor for schools. Teacher aides are provided for students with identified support needs. Funding provides additional resourcing including adaptive technology. Personal development for teachers and Teacher Aides is also funded by MoE. The Creative Centre, which is a school providing education and training for post-compulsory school aged people, is funded by the Cook Islands Government in the same way as all other government schools.

84. MOE provides teacher aide support in the homes if students cannot attend mainstream at any time; and is currently scoping the provision of disability access for all schools.

85. All new buildings now provide disability access and bathroom facilities, etc.

*Ministry of Education Act 2012*

86. Part 4 Section 22 (entitlement to attend government school) states that:

(1) Every person is entitled to be enrolled and educated at a government school if he or she is:

(a) Aged 3 years or older; and

(b) Resident in the Cook Islands.

87. Section 23 (Compulsory enrolment and attendance) requires every parent to ensure that their child is enrolled at a primary school from the date on which they turn 5 years.

88. Section 24 (Exemption from attending school) (3) states that: "The Secretary must not exempt a parent or guardian just because the child concerned has special needs or is pregnant." (4) states that:

> "For the purposes of this section, a child has special needs if he or she is not developing to his or her full potential, or is at risk of not achieving the major achievement objectives of the school curriculum, because of learning or behavioural difficulties."

*Ministry of Education's Infrastructure Policy*

89. The Ministry of Education policy environment is covered by the following policies:

- Fitness for Purpose;
- Inclusive Education;
- Cook Islands Investment Corporation – Warrant of Fitness.

90. A disability access report was compiled by the Policy and Development Division for Rarotongan schools, as well as the gazette article published in the 3rd school term of 2014. Guidelines and suggestions to improve access to facilities for those with specific impairments were compiled and sent to schools.

91. Pa Enua schools will be surveyed as part of upcoming school reviews in 2015 and compiled. The Division will then work with Finance Division on developing a timeline to address the issues that scoping has identified. This will most probably deal with the "quick fixes" rather than the big infrastructural plans. Although this will be a matter of refurbishment and any new buildings have taken in account the access and services identified.

*Disability Access in Schools*

92. The Ministry of Education recognizes its obligations under the Cook Islands Disability Act 2008 and schools are encouraged to constantly work towards improving their facilities and services in order to make them more accessible for those with disabilities. Disabled people have the same rights and opportunities as others to access educational services within the school community. Access and inclusion are about ensuring that all educational services, facilities and information are available to all school community members, including those who have a disability, so that they have the opportunity and choice to participate in all aspects of education.

93. Schools need to consider making reasonable adjustments when possible to their school facilities in order to accommodate the needs of disabled people. The following are some suggestions identified by the Ministry of Education to improve the quality of educational services and access to facilities for those with specific impairments:

- Provide clearly designated disabled parking as close as possible to facilities;
- Avoid abrupt vertical changes of level (steps, entrance way) to ensure a continuous accessible path of travel for wheel chairs or those who need support when walking;
- Provide wheelchair ramps to allow easy access to other facilities;
- Provide clear and adequate space into doorways and within rooms to allow for wheelchair dimensions and movement;
- Provide hand rails on steps and ramps to allow continuous movement and for supporting;
- Modify current school toilets to include a disabled accessible toilet facility;
- Make all signage as clear as possible for visually impaired students and visitors.

## Health (art. 25)

**Reply to the issues raised in paragraph 28 of the list of issues**

94. In 2013, the Cook Islands Government commenced a review of the National Strategic Plan for HIV and Other STIs and the development of a broader sexual and reproductive health plan. This involved the review of documents and reports including the Cook Islands National Strategic Plan for HIV and Other STIs (2008–2013); the Monitoring and Evaluation Frameworks and Implementation Plan; the Cook Islands National STI Treatment Guidelines; Regional Comprehensive STI Management Guidelines and the Cook Islands National Policy on Gender Equality and Women's Empowerment.

95. In 2014 a new Cook Islands Integrated National Strategic Plan for Sexual and Reproductive Health 2014–2018 was developed around a conceptual framework with five priority areas: (1) Leadership and policies; (2) Prevention and gender rights; (3) Program integration; (4) Comprehensive management of STIs; and (5) Family planning and reproductive health. The mission statement states: All Cook Islanders will enjoy the highest standards of health and well-being through equitable access to comprehensive, integrated, effective, quality and evidence-based sexual and reproductive health services, with focus on "keeping HIV at zero", and reducing to the barest minimum the burden of all forms of STIs, in a supportive society free from all forms of gender discrimination.

96. Priority Area 5, Goal 5A of the National Strategic Plan states that it will ensure that women and girls have appropriate access to the array of sexual and reproductive health education and services and live in a safe and secure environment. One key activity under this priority area is to train Sexual and Reproductive Health providers on special needs of people with disabilities and their families.

## Habilitation and rehabilitation (art. 26)

**Reply to the issues raised in paragraphs 29 and 30 of the list of issues**

97. Occupational therapists training are provided by Te Vaerua when required. Speech therapy at some stages is provided by Ministry of Education. Physical training is provided by the Ministry of Health's self-funded physio-therapist and Te Vaerua.

98. Ministry of Health does not employ a local audiologist. Funding is provided by through donor funding by the New Zealand Government through the health specialist visits program. An audiologist team comes through only once a year and began in 2013.

99. There is a high reliance on overseas aid for the services of audiologists.

100. Some equipment, although limited, is provided by Ministry of Health, Te Vaerua Rehabilitation Group (NGO) and donations from overseas such as: wheelchairs, commodes, crutches.

## Work and employment (art. 27)

**Reply to the issues raised in paragraph 31 of the list of issues**

101. The Employment Relations Act (ERA) was passed by Parliament in December 2012. The ERA is an inclusive legislation and provides for persons with a disability.

102. The ERA provides for the interpretation of disability to include both physical and intellectual disabilities. The ERA defines disability as "a congenital or permanent physical impairment, including any sensory impairment or an intellectual or development disability, or loss or abnormality of physiological or anatomical structure or function, or a psychiatric disability."

103. Section 55 – Part 5 of the ERA provides protection coverage to employees through prohibited grounds of discrimination including the discrimination of persons with a disability. The full list of prohibited grounds of discrimination under the ERA includes:

- Race, ethnic origin, skin colour or appearance;
- National origin;
- Opinion and belief;
- Religion;
- Gender or sexual preference;
- Disability;
- Age;
- Health status;
- Maternity.

**Reply to the issues raised in paragraph 32 of the list of issues**

104. The Cook Islands Government does not collect regular data on employment and does not provide transition programmes such as job seeking services from unemployment to employment and therefore does not collect data on access to the general labour market for people with disabilities and those without disabilities. As there are no formal transition programmes, information on people with Disabilities in the workforce can only be estimated based on the 2011 Census.

105. Results from the recent Labour Monograph using 2011 Census data shows the total number of wage earners for the Cook Islands was 4,774. Of this, 454 were wage earners with a self-identified disability.

106. Although the figures from the census show a positive snap shot of the those employed with a disability, the definition provided in the census for "disability" may have

given figures which are higher than the actual reality of those with a disability in the labour force. The definition of disability in the census is as follows:

"Does a health problem or condition you have (lasting more than 6 months) cause you difficulty with, or stop you from:

- Seeing, even when wearing glasses of contact lenses;
- Hearing, even when using a hearing aid;
- Walking, lifting or bending;
- Using your hands to hold, grasp or use objects;
- Learning, concentrating or remembering things;
- Communicating with others;
- Socialising or mixing with others;
- No difficulty or too young to detect any difficulties;
- Have you suffered from fish poisoning (ciguatera)."

## Participation in political and public life (art. 29)

**Reply to the issues raised in paragraph 33 of the list of issues**

107. Section 60 of the Electoral Act 2004 provides that if any elector is unable to read or write (due to physical handicap or otherwise), and wishes to vote, the Presiding Officer with any scrutineers present enter into the polling booth and in the sight and presence of the Presiding Officer and scrutineers mark the voting paper according to the instruction of the elector with the Presiding signing their own name at the foot.

108. Section 61 of the Electoral Act 2004 provides if any elector is unable to attend polling booths due to old age, illness or disability they may write to the Returning Officer for a special care elector certificate. The Returning Officer is to make arrangements to provide a mobile booth.

109. There are no planned changes to these sections in the Electoral Act 2004. There has been no public pressure or policy reason to amend this process but it will be a matter for review.

## Participation in cultural life, recreation, leisure and sport (art. 30)

**Reply to the issues raised in paragraph 34 of the list of issues**

110. We are unaware of this Treaty but will be considered by the Cook Islands Government.

**Reply to the issues raised in paragraph 35 of the list of issues**

111. There are only two public libraries on Rarotonga and both are accessible to everyone including persons with disabilities and those with intellectual and psycho-social impairments.

# C. Special obligations

## Statistics and data collection (art. 31)

**Reply to the issues raised in paragraph 36 of the list of issues**

112. This will be discussed between the Disability stakeholders and the national Statistics office in the near future for an appropriate and inclusive question on disability to be included in the 2016 national census.

## International cooperation (art. 32)

**Reply to the issues raised in paragraph 37 of the list of issues**

*Social Impact Fund (New Zealand/Cook Islands Governments)*

113. The Cook Islands Social Impact Fund (SIF) was established as a partnership between the Cook Islands and New Zealand governments in 2012 to streamline funding support to the Cook Islands civil society sector following the review of the New Zealand Government donor funding towards the Community Initiative Scheme. The SIF provides for the delivery of services by civil society organisations to help meet the priority needs of Government affecting the vulnerable members of the community. The priority areas are: achieving gender equality, protecting and promoting rights of children and young people, protecting and promoting rights of people with disabilities, assisting the elderly, the prevention and elimination of domestic violence, and addressing mental health.

114. The SIF has two types of funding streams:

(i) Programme Funding – selected organisations are provided a three year contract to assist with programme costs ranging between $50,000 and $150,000 each year. The Cook Islands National Disability Council (including 5 disability learning centres in the outer islands), Te Vaerua Community Rehabilitation Services and Te Kainga (Mental wellbeing) are recipients of the three year programme contracts representing 67 per cent of the total funding allocated under this stream;

(ii) Project Funding – selected organisations are provided short-term funding of up to 12 months for small community projects valued between $5,000 to $50,000. In 2014, three organisations that provide services to people with disabilities received 50 per cent of the total project funds.

115. The Fund is monitored in partnership with the New Zealand Government.

*Disability Inclusive Development project (Australian Government)*

116. The Pacific Regional Strategy on Disability is a five-year strategy that Forum Island Leaders formally endorsed in August 2010 and made commitment to its implementation. A partnership with the Government of Australia was agreed in 2011 that provides funding for three years (to 2014) to implement the strategy. Request for support to the Australian Government was lodged by the Cook Islands Government through the Ministry of Internal Affairs to assist with implementation of its responsibilities under the Convention, to monitor and report on progress, and to provide support for adequate budgetary resources to strengthen the capacity of the Disability Division in the Ministry of Internal Affairs.

117. The Australian Government approved funding of NZ$250,000 over two years through the Pacific Regional Strategy on Disability (2011–2015). The project is a 2 year project that commenced in August 2014. A key initiative was the completion of the new

national policy on disability and the promotion of the Convention, legislation and national policy in the outer islands. Awareness-raising has commenced in the outer islands with 2 of the planned 9 outer islands visited to date.

*Pacific Regional Strategy on Disability (Pacific Islands Forum Secretariat/Australian Government)*

118. In 2008, Australia released the Development for All: Towards a disability-inclusive Australian aid program 2009–2014. The strategy was designed to ensure that people with disability were included in and benefit equally from Australia's aid program, and support Australia's obligations under the UN Convention on the Rights of Persons with Disabilities (CRPD).

119. The independent mid-term review of Development for All in 2012 indicated that Australia's support has been considerable, and has led to significant improvement in the lives of people with disability, including through increased access to education, employment, health services, public infrastructure, and law and justice. The review also highlighted some areas for further work, including strengthening internal systems and guidance, and measuring impact.

120. A mid-term review of the Pacific Regional Strategy on Disability, which is funded through Australia's Development for All program took place from October 2013 to January 2014. The mid-term review provided information about the progress to date of the implementation to inform what needs to happen in the future to strengthen implementation of the long term plan for Disability Inclusive Development in the Region.

121. On the conclusion of the Development for All strategy in 2014, the Australian Government is formulating the next disability inclusive development strategy which will guide its international cooperation on disability-inclusion from 2015 to 2020. The new strategy will build on the success of the Development for All strategy, while bringing a stronger focus on building skills, creating jobs and fostering economic growth in the Pacific region.

*Sustainable Development Goals*

122. The post Millennium Development Goals (MDGs) consultations at the Global level have focused on the structure of the new Sustainable Development Goals, which will replace the MDGs and have included discussion on the inclusion of persons with disabilities. The Pacific region has played a prominent role in the SDGs Open Working Group, with PNG, Palau and Nauru active in helping to shape the goals and targets which are likely to span from 2015 to 2030. After their final meeting in July, the SDGs Open Working Group came to an agreement, proposing 17 SDGs and 169 targets (refer Annex i for a full list of goals and targets). The large number of SDGs and targets proposed by the SDGs Open Working Group are a significant increase on the 8 Millennium Development Goals (MDGs) and related 21 targets and 60 indicators. Forum Leaders at their meeting in Palau in late-July/early August, "expressed their serious concern for the extremely large number of SDGs and targets being discussed at the global level and called on the global community to strive for a more manageable, achievable and limited number of SDGs with clear and relevant targets." This proposed quantum of goals and targets will make tracking progress towards achieving the SDGs problematic for Small Island Developing States (SIDS), including those in the Pacific. Many Forum island countries already face difficulties in tracking progress towards the MDGs as a result of limited resources, including statistical capability and capacity.

123. At the International Conference on Small Islands Developing States in September 2014 held in Samoa, disability featured in the Outcomes statements of the Major Groups.

Major Groups called on SIDS to recognize and mainstream disability inclusive development as an approach for achieving rights and as a cross cutting enabling element for sustainable development to ensure full and effective participation and inclusion of persons with disabilities and their organisations in the implementation of SIDS priorities. They also called for the ratification and implementation of the Convention on the Rights of Persons with Disabilities (CRPD), ensuring that disability rights are recognised in national laws and policies including appropriate financial resources and that the data is accordingly appropriately disaggregated.

124. Pacific Forum Disability Ministers, at its 4th regional meeting held in October 2014, welcomed specific references to persons with disabilities in the SDGs, recalling that this was a major failing of the MDGs and encouraged the negotiators of the SDGs to retain a focus on persons with disabilities, including by retaining SDGs related to inclusive education (goal 4), employment and decent work (goal 8), addressing inequality within and between countries (goal 10), accessibility of human settlements (goal 11), and the need to strengthen the means of implementing and monitoring the SDGs (goal 17). Ministers also recognised that there are opportunities in 2015 to influence the agenda for the SDGs and disability inclusive development, including the seventieth session of the UN General Assembly, to be held in September 2015, to review the status of and progress made towards the realization of the development goals for persons with disabilities.

**Reply to the issues raised in paragraph 38 of the list of issues**

125. The Cook Islands Government encourages the attendance and involvement by disabled people to respective international meetings. Where nominations from Disabled Persons Organisations are invited, the Disability Division ensures that the Cook Islands National Disability Council is informed and independently undertakes their own nomination process. Their process takes into account the person with disabilities capacity with respect to the issues being discussed at those conferences. Should there be a demand to have special requirements for disabled people to have access to such international meetings and engagements, a consultation with relevant government and non-government agencies takes place to address this demand.

## National implementation and monitoring (art. 33)

**Reply to the issues raised in paragraph 39 and 40 of the list of issues**

126. In the finalisation of the new national Disability Inclusive Development policy, the proposed action plan includes the establishment of a national monitoring mechanism involving relevant stakeholders, within Government and civil society to monitor progress against the plan. This is currently being carried out by the Ministry of Internal Affairs through the assistance of the Australian Government funded Disability Inclusive Development project. Persons with a disability and their organizations are an important partner in the proposed monitoring process.